

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

DOMENIC SALVATORE ALBANESE,
Plaintiff,

V.

**DEAN J. DECAS, et al.,
Defendants.**

**Civil Action No.
20-10392-IT**

ORDER

TALWANI, D.J.

Domenic Salvatore Albanese (“Albanese”), now incarcerated at the Norfolk County Correctional Center, initiated this action by filing a *pro se* civil rights Complaint [#1] naming as defendants the Wareham Police Department and two Wareham Police Department detectives.

By Memorandum and Order [#10] dated April 8, 2020, the Court granted Albanese's Application to Proceed Without Prepayment of Fees [#2], denied Albanese's Motion for Appointment of Counsel [#3], and directed Albanese to show cause why this action should not be dismissed for failure to state a claim upon which relief may be granted. Because Albanese is a prisoner plaintiff, he was assessed an obligation to make payments towards the \$350.00 filing fee pursuant to 28 U.S.C. § 1915(b) and the clerk issued a Notice for Payment of Prisoner Filing Fee [#11].

On April 21, 2020, Albanese filed a response titled Show Cause and Motion for Dismissal Without Prejudice [#12]. Albanese seeks a continuance or dismissal without prejudice. *Id.* He also requests a continuance or waiver of the partial filing fee. *Id.*

Albanese's request will be treated as a notice of voluntary dismissal pursuant to Federal

Rule of Civil Procedure 41. Rule 41 permits a plaintiff to dismiss an action without a court order where the plaintiff files a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment. *See* Fed. R. Civ. P. 41(a)(1)(A)(i). At this early stage of the litigation, Albanese has the right to voluntarily dismiss this suit without prejudice.

To the extent Albanese seeks a refund or complete waiver of the filing fee, the Court is limited by the strictures of 28 U.S.C. § 1915. The *in forma pauperis* statute specifically provides that “if a prisoner brings a civil action or files an appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). Section 1915(b)(2) permits prisoners to pay the remainder of filing fees in installments over time. The statute “makes no provision for return of fees partially paid or for cancellation of the remaining indebtedness.” *Goins v. Decaro*, 241 F.3d 260, 261 (2d Cir.2001) (rejecting a request for a refund of appellate fees after voluntary withdrawal of appeal); *McGore v. Wigglesworth*, 114 F.3d 601, 604–607 (6th Cir.1997) (filing fee due when complaint filed; dismissal of a complaint does not eliminate prisoner’s obligation to pay the required fees). Therefore, Albanese is obligated to make payments until the \$350.00 filing fee is paid in full. *See* 28 U.S.C. § 1915(b)(1)-(2).

Based upon the foregoing, it is hereby ORDERED that this action is dismissed without prejudice.

So ordered.

/s/ Indira Talwani
Indira Talwani
United States District Judge

Dated: May 18, 2020